

# **Public Works Contract Arbitrations**

# **PWCA**

California Public Contract Code  
and  
California Code of Regulations

Procedures for the  
Office of Administrative Hearings

**Arbitrations of State Contract Act Contracts**

**2005**

Including changes from 1997 through 2004



State of California

Program Administered by: Office of Administrative Hearings  
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# 2005

## Public Works Contract Arbitrations

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# **PUBLIC CONTRACT CODE**

## **Part 2: Contracting by State Agencies**

### **Chapter 1: State Contract Act**

#### **Article 7.1: Resolution of Contract Claims**

##### **10240. Arbitration as remedy**

The remedy for the resolution of claims arising under contracts made under the provisions of this chapter shall be arbitration pursuant to this chapter.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410, as added Stats 1981 ch 769 §6.

##### **10240.1. Initiation procedure; Limitations period**

The claimant may initiate arbitration not later than 90 days after the date of service in person or by mail on the claimant of the final written decision by the department on the claim. This limitation shall not apply to any claim founded on any cost audit, latent defect, warranty, or guarantee under the contract.

Amended by Stats. 1998, c.857 § 8; Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.1, as added Stats 1981 ch 769 §6.

##### **10240.2. Failure to exhaust administrative remedies as bar**

A failure by the claimant to pursue diligently and exhaust, as to the claim, the required administrative procedures set forth in the contract under which the claim arose shall be a bar to arbitration hereunder until there has been compliance therewith. Subject to the preceding sentence, if more than 240 days have elapsed since acceptance of the work by the department, the claimant is entitled to arbitration, even though the procedures are not concluded.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.2, as added Stats 1981 ch 769 §6.

Cross References:

Review of rules and regulations by Office of Administrative Law: Gov C §§11340.1, 11342 et seq.

### 10240.3. Single arbitrator

Unless otherwise agreed by the parties, the arbitration shall be conducted by a single arbitrator selected by the parties from the certified list created by the Public Works Contract Arbitration Committee. If the parties cannot agree on the arbitrator, either party may petition the superior court to appoint one from the panel of arbitrators certified by the Public Works Contract Arbitration Committee.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.3, as added Stats 1981 ch 769 §6.

### 10240.4. Effect of departmental decision

No decision made by a department shall be conclusive on any issue in the arbitration.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.4, as added Stats 1981 ch 769 §6.

### 10240.5. Regulations

The Departments of General Services, Transportation, and Water Resources shall jointly adopt and may, from time to time, modify, revise, or repeal uniform regulations to implement the provisions of this article, which regulations shall be consistent with this article and [Article 7.2 \(commencing with Section 10245\)](#). The regulations may include but not need not be limited to:

- (a) The method of initiating arbitration.
- (b) The place of hearing based upon the convenience of the parties.
- (c) Procedures for the selection of a neutral arbitrator.
- (d) The form and content of any pleading.
- (e) Procedure for conducting hearings.
- (f) The providing of experts to assist the arbitrator in the event the assistance is needed.
- (g) The content of the award.
- (h) Simplified procedures for claims of fifty thousand dollars (\$50,000) or less.

Pending adoption of the initial uniform regulations under this section, the arbitration rules set forth in [Subchapter 3 \(commencing with Section 301\) of Chapter 2 of Title 1 of the California Administrative Code](#),<sup>1</sup> shall govern the conduct of arbitrations under this chapter.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.5, as added Stats 1981 ch 769 §6.

<sup>1</sup> This reference is to the old California Administrative Code; the hyperlink is to the current California Code of Regulations section 1301.

## **10240.6. "Claim"**

As used in this article, "claim" means a demand for monetary compensation or damages, arising under or relating to the performance of a contract awarded under this chapter.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.6, as added Stats 1981 ch 769 §6.

## **10240.7. "Public Works Contract Arbitration Committee"**

As used in this article, "Public Works Contract Arbitration Committee" means the committee created by [Article 7.2 \(commencing with Section 10245\)](#).

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.7, as added Stat 1981 ch 769 §6.

## **10240.8. Controlling law**

Unless the parties to the contract otherwise agree, the arbitration decision shall be decided under and in accordance with the law of this state, supported by substantial evidence and, in writing, contain the basis for the decision, findings of fact, and conclusions of law.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.8, as added Stats 1981 ch 769 §6.

## **10240.9. Joinder of parties**

A party to the contract may join in the arbitration as a party, any supplier, subcontractor, design professional, surety, or other person who has so agreed and if the joinder is necessary to prevent a substantial risk of the party otherwise being subjected to inconsistent obligations or decisions.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.9, as added Stats 1981 ch 769 §6.

## **10240.10. Construction**

Nothing in this article shall be construed as preventing the parties to the contract, after the claim has arisen, from mutually agreeing in writing to waive the provisions of this article and to have the claim litigated in a court of competent jurisdiction.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.10, as added Stats 1981 ch 769 §6.

## **10240.11. Governing procedure**

Except as provided in this article and in the regulations adopted pursuant to [Section 10240.5](#), the procedure governing the arbitrations shall be as set forth in [Title 9 \(commencing with Section 1280\) of Part 3 of the Code of Civil Procedure](#). All provisions of [Section 1283.05 of the Code of Civil Procedure](#), except subdivision (e) thereof, apply to the conduct of discovery for any arbitration hereunder.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov C §14410.11, as added Stats 1981 ch 769 §6.

## **10240.12. Judicial review**

A party may, within the applicable time periods and upon the grounds specified in this section and in [Article 1 \(commencing with Section 1285\) of Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure](#), petition the court to confirm, correct, or vacate the award rendered by the arbitrator. However, no department may petition to vacate an award without the prior written authorization of its agency secretary. Except where the parties agree not to have the arbitration decision rendered in accordance with the provisions of [Section 10240.8](#), a court shall vacate the award, or part thereof, if it determines either that the award, or part thereof, is not supported by substantial evidence or that it is not decided under or in accordance with the laws of this state. If the award, or part thereof, is vacated on the grounds set forth in the preceding sentence or in subdivision (d) or (e) of [Section 1286.2 of the Code of Civil Procedure](#) or if the court determines that the award does not include a determination of all submitted questions necessary to determine the controversy, the court may order a rehearing before the original arbitrator or remand to the original arbitrator that portion of the dispute which the court concludes the arbitrator failed to determine.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov §14410.12, as added Stats 1981 ch 769 §6.

## **10240.13. Costs**

The cost of conducting the arbitration shall be borne equally by the parties. The filing fee, witness fees, costs of discovery, or any other cost necessarily incurred by one party shall not be shared by any other party, except that the arbitrator may allow the prevailing party to recover its costs and necessary disbursements, other than attorney's fees, on the same basis as is allowed in civil actions. These costs shall be taxed as in civil actions.

Interest may be recovered as part of the award as in a civil action. The arbitrator has the same authority as a court in awarding interest and the commencement of the arbitration is equivalent to the filing of an action under subdivision (b) of [Section 3287 of the Civil Code](#) for the purpose of an award of interest.

If a party has made an offer of settlement and the award is less favorable than the offer, then the party who has received the offer shall not recover any interest accruing from and after the date on which the offer was made, nor costs of suit.

Reasonable attorney fees may be recovered according to any of the following:

(a) By a party who has made an offer under the circumstances set forth in the preceding sentence but only as to those fees incurred from and after the time of making the offer.

(b) Against a party when substantial evidence establishes that the party has acted frivolously or in bad faith in its demand for, or participation in, the arbitration.

Added Stats 1982 ch 466 §90.

Historical Derivations:

Former Gov §14410.13, as added Stats 1981 ch 769 §6.

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## **Article 7.2 Public Works Contract Arbitration Committee**

[Added Stats 1982 ch 466 §91.]

### **10245. Establishment; Members**

There is hereby established the Public Works Contract Arbitration Committee, which shall consist of seven members, as follows:

(a) Three public members, who shall be appointed by the Governor, each of whom shall have at least ten years' experience with a general contracting firm engaged, during that period, in public works construction in California.

(b) The directors of the Departments of General Services, Transportation, and Water Resources shall each appoint a member, who shall be a state officer or employee within their respective departments. Each member shall serve at the pleasure of the director who appointed the member.

(c) The Director of the Office of Administrative Hearings shall be a nonvoting member of the Public Works Contract Arbitration Committee.

Added Stats 1982 ch 466 §91.

Historical Derivations:

Former Gov C §14415.1, as added Stats 1981 ch 769 §7.

### **10245.1. Term of office; Expenses**

Each member appointed by the Governor shall serve for a term of four years, but shall continue in office until the successor to the member is appointed. Each member shall serve without compensation, but shall be reimbursed for travel and other expenses necessarily incurred in the performance of the member's duties.

Added Stats 1982 ch 466 §91.

Historical Derivations:

Former Gov C §14415.1, as added Stats 1981 ch 769 §7.

### **10245.2. Recommendations respecting arbitration practice**

The committee may make recommendations to the departments respecting the arbitration practice and procedure provided by [Article 7.1 \(commencing with Section 10240\)](#). The departments shall consult and confer with the committee respecting the content of the uniform regulations governing the conduct of arbitrations under [Article 7.1 \(commencing with Section 10240\)](#) and shall consider the recommendations in adopting uniform regulations pursuant to [Section 10240.5](#).

Added Stats 1982 ch 466 §91.

Historical Derivations:

Former Gov C §14415.2, as added Stats 1981 ch 769 §7.

### **10245.3. Standards and qualifications for arbitrators**

The committee may establish standards and qualifications for the certification of arbitrators and certify as arbitrators persons meeting such standards and qualifications. The committee may remove persons from its list of certified arbitrators.

Added Stats 1982 ch 466 §91.

Historical Derivations:

Former Gov C §14415.3, as added Stats 1981 ch 769 §7.

### **10245.4. Administrative services**

The Office of Administrative Hearings shall provide administrative services, facilities, and fiscal support to implement this article and [Article 7.1 \(commencing with Section 10240\)](#). The cost thereof shall be recovered through filing fees imposed for each arbitration.

Added Stats 1982 ch 466 §91.

Historical Derivations:

Former Gov C §14415.4, as added Stats 1981 ch 769 §7.

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## **Part 4: Arbitration of Public Works Contract Claims**

### **22200. Public works contract definitions**

As used in this part:

(a) "Public works contract" means, except for a contract awarded pursuant to the [State Contract Act \(Part 2 \(commencing with Section 10100\)\)](#), a contract awarded through competitive bids or otherwise by the state, any of its political subdivisions or public agencies for the erection, construction, alteration, repair, or improvement of any kind upon real property.

(b) "Claim" means a demand for monetary compensation or damages, arising under or relating to the performance of any public works contract.

Added Stats 1988 ch 1408 §10.

### **22201. Inclusion of provision for arbitration**

Unless otherwise prohibited by law, the terms of any public works contract may include at the time of bidding and of award a provision for arbitration of any claim pursuant to [Article 7.1 \(commencing with Section 10240\) of Chapter 1 of Part 2](#).

Added Stats 1988 ch 1408 §10.

**CALIFORNIA CODE OF REGULATIONS**  
**Title 1. General Provisions**  
**Division 2. Office of Administrative Hearings**  
**Chapter 4. Arbitration of Claims Under State Contract Act Contracts**

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**ARTICLE 1. GENERAL PROVISIONS**

**1300. Introduction**

This subchapter governs the procedure for arbitration proceedings to resolve claims arising under or relating to contracts by Public Agencies under the State Contract Act.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10106 and 10240-10245.4, Public Contract Code.

**HISTORY:**

1. New Subchapter 3 (Articles 1-9, Sections 300-382, not consecutive) filed 6-1-79; effective thirtieth day thereafter (Register 79, No. 22).
2. Amendment (including Subchapter heading) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
3. Renumbering of former chapter 3 (sections 300-393) to new chapter 4 (sections 1300-1393) and renumbering of former section 300 to new section 393 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

**1301. Definitions**

The following definitions apply in this subchapter:

- (a) "Arbitration" means the proceeding for resolving claims pursuant to [Sections 10240 through 10245.4 of the Public Contract Code](#).
- (b) "Arbitrator" means the person or persons selected pursuant to [Section 10240.3 of the Public Contract Code](#).
- (c) "Contract" means an agreement entered into pursuant to the State Contract Act.
- (d) "Contractor" means the prime contractor who entered into the contract with the Public Agency.
- (e) "Decision on Costs" means a decision, in accordance with these rules, the Contract and [Section 10240.13 of the Public Contract Code](#), which results from a separate supplementary Arbitration proceeding after determining the merits of a matter in Arbitration, and which considers assessing costs, interest and fees against a Party or Parties.
- (f) "Decision on the Merits" means the decision, other than a Decision on Costs, resolving the matter which is the subject of an Arbitration proceeding pursuant to these rules, the Contract and [Public Contract Code Section 10100 et seq.](#)
- (g) "Interested Party" means a Party other than the Contractor and the Public Agency who may be joined in the Arbitration as a Party under the provisions of [Section 10240.9 of the Public Contract Code](#).
- (h) "Party" means any person so named in the Arbitration pleadings.
- (i) "Petitioner" means the Contractor or Public Agency who files a complaint in Arbitration of a claim under the provisions of the Public Contract Code.
- (j) "Public Agency" means any Department of the State of California which entered into the Contract. A Public Agency also means a political subdivision or public agency pursuant to [Public Contract Code Section 22200](#).

(k) "Respondent" means the Contractor or Public Agency against whom a complaint in Arbitration is filed.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240-10245.4 and 22200, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 301 to new section 1301 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## **1302. Interpretation and Application of Subchapter**

(a) The Arbitrator shall interpret and apply the provisions of this subchapter insofar as they relate to the Arbitrator's powers and duties. If there is more than one Arbitrator, the interpretation and application of these rules shall be decided by a majority vote. In addition to the authority expressly granted by law or otherwise by these rules, the Arbitrator shall have the power to issue such orders as necessary to implement these rules.

(b) The Office of Administrative Hearings shall in the administration of Arbitrations hereunder interpret and apply the rules of this subchapter relating to the powers and duties of that office.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 302 to new section 1302 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

## **1303. Communication with the Arbitrator**

No disclosure of any offers of settlement made by any Party shall be made to the Arbitrator prior to the filing of the Decision on the Merits, without the express consent of all Parties.

There shall be no ex parte communication by counsel or any Party with the Arbitrator or a potential Arbitrator on the merits of a contested matter in the absence of or without the express consent of all Parties.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 303 to new section 1303 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1304. Representation

(a) In proceedings under this subchapter an individual Party may appear in person, a corporate Party by an officer or employee thereof, a partnership or joint venture Party by an authorized member or employee thereof, or any of these by a member in good standing of the State Bar of California.

(b) The Public Agency shall appear in proceedings under this subchapter either by its authorized counsel or other person authorized to act on behalf of the agency.

(c) Upon motion pursuant to [Section 1361](#), a member in good standing of the State Bar of California who is counsel of record for a Party may in the discretion of the Arbitrator associate out-of-state counsel provided there has been compliance with the requirements of California [Code of Civil Procedure section 1282.4](#) which sets forth the conditions for pro hac vice admission to arbitration in California.

(d) Parties shall at all times keep the Office of Administrative Hearings and each other currently advised as to any change, addition or substitution of representation or any change in the address or telephone number of its representative(s).

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8, and 10245.4, Public Contract Code.

### HISTORY:

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 304 to new section 1304 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsection (a) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments adopting new subsection (c), relettering subsection and amending newly designated subsection (d) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

## 1305. Service and Filing

(a) Whenever a Party is required or permitted to file any document, it shall be filed in the Sacramento office of the Office of Administrative Hearings together with proof of service of a copy on all other Parties, unless filing prior to service is authorized for good cause by the Office of Administrative Hearings.

(b) Except for subpoenas which may be served by the same methods as in civil actions, service of documents between Parties may be made in the manner provided in [Code of Civil Procedure Section 1013](#), except that a form of mailing providing for a return receipt which proves the date of delivery or a method provided for service of a summons in a civil action must be used for delivery of the following:

- (1) Any pleading by which an Interested Party is to be joined under [Section 1352](#);
- (2) The Decision on the Merits provided for in [Section 1390](#);
- (3) The Arbitration award provided for in [Section 1393](#);
- (4) Any other order or decision which is a final disposition of the Arbitration.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.1, 10240.5 and 10245.4, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 305 to new section 1305 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Editorial correction of subsection (a) (Register 97, No. 25).
4. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## **1306. Waiver of Rules**

Any Party who proceeds with the Arbitration after knowledge that any provision or requirement of this subchapter has not been complied with, and who fails to state objections thereto in writing, shall be deemed to have waived the objection unless it is an objection that the Arbitrator has no jurisdiction of the subject of the claim.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Renumbering of former section 306 to new section 1306 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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## ARTICLE 2. OFFICE OF ADMINISTRATIVE HEARINGS

### 1310. Exercise of Administrative Authority

(a) The Office of Administrative Hearings shall provide all administrative services for Arbitrations under this subchapter except that, unless otherwise agreed to by the Parties and the Office of Administrative Hearings, such services shall not include the services of reporters or transcribers or personnel of the Office of Administrative Hearings as Arbitrators.

(b) The services of the Arbitrator shall be provided by a contract or contracts between the Office of Administrative Hearings, and the person or persons selected to be the Arbitrator under applicable law, these rules, and as consented to by the Parties. Such agreement shall conform to State law, policies and procedures for the employment of expert or personal services. The Office of Administrative Hearings shall compensate the Arbitrator directly.

(c) The Office of Administrative Hearings shall be the repository of the official file for any proceeding under these rules until expiration of the period for an appeal, and may thereafter dispose of any such file, subject to [Government Code Section 14755](#).

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 14755, Government Code; and Sections 10240.5 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 310 to new section 1310 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1311. Payment of Costs

The Office of Administrative Hearings in its discretion may order the Petitioner, Respondent, or any Interested Party at any time to make deposits as may be necessary to assure payment of costs incurred in Arbitration as prescribed by these rules.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.13 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 311 to new section 1311 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).

### 1312. Docketing

Promptly upon receiving the complaint, the Office of Administrative Hearings shall docket the Arbitration and shall notify all Parties designated in the complaint of the docketing.

Note: Authority cited: Sections 10240.5, 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Amendment filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
3. Renumbering of former section 312 to new section 1312 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1313. Bar Pending Public Agency Decision**

If a complaint in Arbitration is filed prior to issuance of a final written decision by the Public Agency and less than 240 days have expired since the date of acceptance of the work, the Office of Administrative Hearings shall dismiss the complaint without prejudice to the filing of a timely complaint.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240, 10240.2, 10240.5 and 10245.4, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 313 to new section 1313 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1313 to new section 1381(a), and renumbering and amendment of former section 1314 to new section 1313 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1314. Absence of an Appointed Arbitrator**

In the absence of an appointed Arbitrator, the Office of Administrative Hearings may decide, with consent of the Petitioner and Respondent, procedural and discovery questions as necessary to avoid delay in the expeditious completion of the Arbitration proceedings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Amendment filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
  3. Renumbering of former section 314 to new section 1314 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  4. Renumbering of former section 1314 to new section 1313, and renumbering and amendment of former section 1315 to new section 1314 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
  5. Amendment filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).
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## ARTICLE 3. SELECTION OF ARBITRATOR

### 1320. Qualifications of Arbitrator

Any Arbitrator appointed pursuant to [Section 1321](#) shall be neutral, subject to disqualification for the reasons specified in [Section 1323](#). If the Petitioner and Respondent agree to a specific Arbitrator, such Arbitrator shall not be subject to disqualification for said reasons, provided appropriate disclosure has been made.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 320 to new section 1320 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1321. Selection of Arbitrators

(a) Unless the Petitioner and Respondent otherwise agree, there shall be only one Arbitrator who shall be selected as hereinafter provided.

(b) The Petitioner and Respondent shall have until 20 days after service of the complaint upon Respondent to agree on the selection of an Arbitrator. If no such agreement is reached, the Petitioner and Respondent shall, within 30 days after service of the complaint upon Respondent, file a list of 5 acceptable Arbitrators ranked in order of preference with the Office of Administrative Hearings. Notwithstanding [Section 1305](#), this list need not be sent to the other parties. OAH shall strike any names over five. If either or both Petitioner or Respondent fails to submit a list or to include five names on its list the Office of Administrative Hearings shall compose or complete the list with names of persons selected at random, who have been enrolled on the panel certified by the Public Works Contract Arbitration Committee and who have indicated a willingness to serve as an Arbitrator in the location for the hearing. Names selected at random shall be listed and accorded preference in the order of their selection. If one or more names appear in common on both lists submitted by the Petitioner and Respondent, the Office of Administrative Hearings shall appoint the Arbitrator from among such names and in accordance with the preferences indicated by the lists.

(c) If no name on the lists of five names appears in common, the Office of Administrative Hearings shall combine the listed names with ten additional names from the certified panel and submit simultaneously to the Petitioner and Respondent a list of names so constituted. The names selected from the certified panel shall be selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing unless the Petitioner and Respondent agree that those so named be limited to persons with expressly designated special technical expertise or qualifications.

(d) The Petitioner and Respondent each shall, within 15 days from the mailing date of the list, cross off any names to which it objects, number the remaining names indicating the order of preference, and file the list with the Office of Administrative Hearings with a copy to each other. If either or both Petitioner or Respondent does not return the list within the time specified or does not indicate an order of preference, all persons named therein shall be deemed equally acceptable.

From among the persons who have been approved on both lists, and in accordance with

the designated order of mutual preference, the Office of Administrative Hearings shall appoint the Arbitrator. If for any reason the appointment cannot be made from the submitted list, the Office of Administrative Hearings shall repeat the submission process with an entirely different list of 20 names selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing.

If after this second submission or six months from the filing of the complaint, whichever comes first, an Arbitrator has not been selected, either Petitioner or Respondent may petition the Superior Court to select one or more Arbitrators in order of preference from among those who have indicated a willingness to serve as an Arbitrator in the location for the hearing.

(e) If the name of a person is submitted as an acceptable Arbitrator and the person is not enrolled on the certified panel of Arbitrators, the Petitioner or Respondent submitting such name at the same time shall also submit a statement of qualifications similar to that required of persons on the certified panel. Failure to submit the required statement of qualifications shall result in elimination of that person's name from the list submitted.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.3, 10240.5, 10245.3 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 321 to new section 1321 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsections (b), (c) and (d) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).
5. Amendment of subsection (d) filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).

## **1322. Disclosure and Challenge Procedure**

(a) The Office of Administrative Hearings shall notify the arbitrator of selection as arbitrator. On notice of selection, the prospective Arbitrator, including one selected by the Superior Court, shall disclose to the Office of Administrative Hearings any circumstances likely to prevent a prompt hearing and decision or to create a presumption of bias. The disclosures shall satisfy the requirements of [Standards 1, 4, 5, 6, 9, 10 \(except subdivision \(d\)\), and 11; Standard 2 \(a\) through \(c\), and \(h\) through \(l\); and Standard 7 except for subdivision \(b\)\(12\) of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, Cal. Rules of Court, Appendix, Div. VI \(Amended effective January 1, 2003\)](#). For purposes of disclosure under these standards the following definitions apply:

(1) "Member of the arbitrator's immediate family" includes the arbitrator's spouse or domestic partner (as defined in [Family Code section 297](#)) and children living in the arbitrator's household.

(2) "Member of the arbitrator's extended family" includes the members of the arbitrator's immediate family and the parents, children and siblings of the arbitrator or the arbitrator's spouse or domestic partner (as defined in [Family Code section 297](#)) and the spouse of those persons.

(b) Upon disclosure, the Office of Administrative Hearings shall advise the Parties of the information in writing. The prospective Arbitrator shall be disqualified by the Office of Administrative Hearings if an objection is made to the Office of Administrative Hearings by Petitioner or Respondent within ten days from the date of receipt of the information. If neither

Petitioner or Respondent objects within the time specified, the prospective Arbitrator shall be deemed acceptable.

(c) After appointment, an arbitrator has a continuing duty to make any disclosures required in subdivision (a) to the Office of Administrative Hearings. Upon disclosure, the Office of Administrative Hearings shall advise the Parties of the information and their right to object. If neither Petitioner or Respondent objects within the time specified, the Arbitrator shall continue to be deemed acceptable. In addition, a party who becomes aware that an arbitrator has made a material misrepresentation or material omission in his/her disclosures, may within 15 days of becoming aware of the misrepresentation or omission, object to the Office of Administrative Hearings, clearly describing the material misrepresentation or material omission and how and when he/she became aware of it. If a timely objection is made to the Office of Administrative Hearings by the Petitioner or Respondent and the Office of Administrative Hearings determines good cause for disqualification exists, the arbitrator shall be disqualified.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment of NOTE filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 322 to new section 1322 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1322 to section 1323 and renumbering and amendment of former section 1323 to section 1322 filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).

### **1323. Notice to Arbitrator of Appointment**

Notice of the appointment of the Arbitrator shall be mailed to the Arbitrator by the Office of Administrative Hearings, together with a copy of these Rules and an oath of office as prescribed by the Office of Administrative Hearings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 323 to new section 1323 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).
5. Renumbering of former section 1323 to section 1322 and renumbering of former section 1322 to section 1323 filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).

## 1324. Vacancy

If after appointment, any Arbitrator shall die, refuse, or be unable to perform the duties of office or be disqualified during the course of the proceeding, a substitute Arbitrator shall be identified from the list of names as preferred by the Petitioner and Respondent and from which the original Arbitrator was selected if possible or in the manner set forth in [Section 1321](#). If a vacancy as described above occurs, the merits of the matter shall be reheard unless otherwise agreed to by the Petitioner and Respondent.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.3, 10240.5 and 10245.4, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Renumbering of former section 324 to new section 1324 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
  4. Amendment filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).
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## ARTICLE 4. AUTHORITY OF ARBITRATOR

### 1330. Jurisdiction

Jurisdiction of the Arbitrator shall be in accordance with [Article 7.1 \(commencing with Section 10240\) of the Public Contract Code](#).

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240-10240.13, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 330 to new section 1330 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Repealer of former section 1330 and renumbering of former section 1331 to new section 1330 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1331. Lack of Jurisdiction

The Arbitrator may raise the issue of jurisdiction to proceed by an appropriate order after affording the Parties an opportunity to be heard.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 331 to new section 1331 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1331 to new section 1330, and renumbering and amendment of former section 1332 to new section 1331 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1332. Appointment of Special Arbitrator to Determine Acceptance of the Work

(a) If prior to Arbitrator selection a dispute arises regarding acceptance of the work, the Office of Administrative Hearings shall, upon request of one or more of the Parties, cause a special arbitrator to be appointed pursuant to [Section 1342](#) for the sole purpose of resolving that dispute.

(b) The special arbitrator selected under this section shall after a hearing provide a written decision on only the issue of the timeliness of the filing of the complaint in Arbitration under the [Public Contract Code Section 10240.2](#) provision for arbitration 240 days after acceptance of the work and whether the requirements of that section have been met. If the special arbitrator decides that the requirements have been met, the Office of Administrative Hearings shall cause a new Arbitrator to be selected pursuant to [Section 1321](#) to handle the Arbitration on the merits. If the special arbitrator decides that the requirements have not been met, the Office of Administrative Hearings shall dismiss the complaint in Arbitration without prejudice to the filing of a timely complaint.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 332 to new section 1332 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1332 to new section 1331 and new section 1332 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1333. Expert Advisors**

(a) With consent of the Parties the Arbitrator may select expert or technical advisors. Such services shall be provided by a contract between the Office of Administrative Hearings and the advisor. Such contract shall be on terms and conditions which are consistent with the State's laws, policies, and procedures.

(b) Petitioner or Respondent may object for cause to the use of a particular individual as an advisor. If such objection is not timely made, it shall be deemed waived.

(c) An expert technical advisor, except with the written consent of Petitioner and Respondent which shall be filed in the record, shall not be in communication with the Arbitrator on the merits of a contested matter except:

(1) in writing, with copies served on all Parties, or

(2) orally on the record in the presence of or after due notice to all Parties, and all evidence, opinions or other information which the expert testifies to or furnishes is subject to cross-examination and pertinent objections.

(d) A non-attorney Arbitrator may secure an attorney advisor by contract arranged through the Office of Administrative Hearings as provided in subsection (a) above to assist in the preparation of the Arbitration award. The attorney advisor may not participate in the Arbitration proceeding in any other way providing, however, that if necessary to the orderly prosecution of the Arbitration hearing, the Arbitrator may submit to the attorney advisor written questions of law. Any advice in response to those questions shall be in writing and incorporated in the record of the proceeding.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 333 to new section 1333 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Editorial correction of subsection (d) (Register 97, No. 25).
4. Amendment of subsections (a)-(c)(2) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
5. Editorial correction of History 4 (Register 2004, No. 43).

### **1334. Lack of Prosecution**

(a) The Arbitrator shall have discretion to dismiss any complaint where the Petitioner or cross-complainant fails to prosecute the matter by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of 18 consecutive months, measured from the filing of the complaint or the last significant action.

(b) The Arbitrator shall dismiss any complaint where the Petitioner cross-complainant fails to prosecute the matter by failing to perform discovery or otherwise fails to take any significant action to move the case to hearing for a period of 36 consecutive months, measured from the filing of the complaint or the last significant action.

(c) For purposes of this section "significant action" means an action, which is timely served and filed by the Petitioner or Cross-complainant pursuant to Section 1305, and which is designed to move a complaint to hearing. It shall include good-faith requests for discovery, good-faith motions to eliminate issues and pre-hearing briefs requested by the Arbitrator.

(d) The Arbitrator shall dismiss a complaint if the hearing has not commenced within five years after the filing of the complaint.

(e) If an Arbitrator has not been selected or is absent due to resignation, death or disability, the Office of Administrative Hearings shall have authority to dismiss the complaint as specified in (b) or (d).

Note: Authority cited: Sections 10240.5, 10240.11 and 10245.4, Public Contract Code. Reference: Sections 10240.5, 10240.11 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Renumbering of former section 334 to new section 1334 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  3. Renumbering of former section 1334 to new section 1382 and renumbering and amendment of former section 1335 to new section 1334 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
  4. Amendment filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).
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## **ARTICLE 5. SIMPLIFIED CLAIMS PROCEDURE**

### **1340. When Available**

The simplified claims procedure provided for in this article is available by election of either Petitioner or Respondent on claims which in the aggregate do not exceed \$50,000 in one complaint and a final written decision or ruling has been issued by the Public Agency. It is also available by written stipulation of both Parties on claims which in the aggregate exceed \$ 50,000 in one complaint, whether Arbitration is pursued after a final written decision or under the 240 day rule.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 340 to new section 1340 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of article heading and renumbering of former section 1340 to new section 1352 and renumbering and amendment of former section 1375 to new section 1340 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1341. Election**

The Petitioner or Respondent elects to have its claims resolved with use of the simplified claims procedure by indicating its election with or in the filing of its first pleading in Arbitration and by attaching thereto a copy of the written decision or ruling of the department or agency. In the complaint or answer, the Party electing the simplified claims procedure shall state all facts and conclusions at issue. The Arbitrator may consider a request for the simplified claims procedure after the filing of the first pleading except such request shall be granted only for mistake, inadvertence, surprise or excusable neglect.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 341 to new section 1341 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1341 to new section 1360 and renumbering and amendment of former section 1376 to new section 1341 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1342. Simplified Selection of Arbitrator**

(a) The Petitioner and Respondent may select an Arbitrator by agreement.

(b) If the Petitioner and Respondent do not agree upon an Arbitrator, the Office of Administrative Hearings shall promptly prepare a list of twenty potential Arbitrators selected at random from those who have indicated a willingness to serve as an Arbitrator in the location for the hearing. Within ten days from the mailing, the Petitioner and Respondent each may cross off the names of not more than ten to which it objects, numbering the remaining names in the order of preference and return the list to the Office of Administrative Hearings with a copy to the other. If either the Petitioner or Respondent does not return the list within the time specified or does not indicate an order of preference, all persons named therein shall be deemed equally acceptable. The Office of Administrative Hearings shall appoint the Arbitrator from among the persons whose names remain in accordance with the

designated order of mutual preference. The disclosure and challenge procedure in [Section 1323](#) shall apply. If for any reason the appointment cannot be made from the submitted list, the Office of Administrative Hearings shall repeat the process until an Arbitrator is selected.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 342 to new section 1342 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1342 to new section 1380 and renumbering of former section 1377 to new section 1342, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (b) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

### **1343. Limited Discovery**

Not more than 25 days and not less than 10 days prior to a hearing, the Arbitrator, on written request of a Party, may direct the Parties:

- (1) to disclose the names and addresses of witnesses to the extent known to each Party,
- (2) afford an opportunity to the Parties to inspect and copy any pertinent writings, documents, or exhibits in the possession, custody, or control of other Parties, and
- (3) to exchange all writings to be offered in evidence. In the absence of agreement, for good cause shown, the Arbitrator may permit limited interrogatories and depositions of percipient witnesses. The foregoing constitutes the sole and exclusive discovery in simplified claims procedure.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 343 to new section 1343 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1343 to new section 1385 and renumbering and amendment of former section 1378 to new section 1343 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## **1344. Initial Record**

No verbatim record of the proceedings is required. The claim file and written record, if any, produced at the highest agency level of review, including all written materials submitted by the Petitioner or Respondent and reviewed by the Public Agency, shall be forwarded to the Arbitrator by the Public Agency with or prior to filing of an answer and shall constitute the initial record before the Arbitrator. The Parties may submit and file in advance of the hearing any additional written, photographic or demonstrative evidence or may object to materials submitted by other Parties. In addition, summaries of anticipated testimony, declarations of witnesses and written arguments or briefs may also be required by the Arbitrator. Based upon the initial record and any additional evidence and written arguments submitted in advance of the hearing, the Arbitrator shall establish the issues to be tried.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### **HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 344 to new section 1344 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1344 to new section 1361 and renumbering and amendment of former section 1379 to new section 1344 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## **1345. Hearings and Award**

(a) No decision made by a Public Agency shall be conclusive on any issue in the Arbitration and each Party shall have the burden of proving its affirmative allegations by a preponderance of the evidence as in ordinary civil actions.

(b) Affidavits of witnesses are admissible if the witness is competent and the statements are relevant to the issues established by the Arbitrator and provided they are filed at least 15 days in advance of the hearing. If within at least 5 days in advance of the hearing a Party files a written objection to the proffered testimony, such Party shall be entitled to cross-examine any such witness. Upon failure to produce the witness for cross-examination, the affidavit shall be disregarded as evidence in the case, except to the extent it is otherwise admissible hearsay.

(c) The award shall be in writing affirming, disaffirming or modifying the written decision of the Public Agency and shall be made setting forth the reasons therefor with findings of fact and conclusions of law, unless waived by the Parties. The decision shall be in accordance with the law of this state, supported by substantial evidence.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.8, Public Contract Code.

### **HISTORY:**

1. Amendment of subsection (b) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14)
2. Renumbering of former section 345 to new section 1345 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1345 to new section 1387 and renumbering and amendment of former section 1380 to new section 1345 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1346. Other Provisions Applicable

Except as herein provided to the contrary, the provisions of [Chapter 4, "Public Works Contract Arbitrations," \(Division 2, Title 1, California Code of Regulations\)](#), shall be applicable to the simplified claims procedure.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Renumbering of former section 346 to new section 1346 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  3. Renumbering of former section 1346 to new section 1388 and renumbering and amendment of former section 1381 to new section 1346 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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## ARTICLE 6. PLEADINGS

### 1350. Complaint, When Due

(a) Pursuant to [section 10240.1 of the Public Contract Code](#), an Arbitration is commenced by filing with the Office of Administrative Hearings in Sacramento a complaint in Arbitration within 90 days from receipt of the final written decision by the Public Agency on the claim or, if no final written decision has been issued, at any time subsequent to 240 days after acceptance of the Contract work. The Petitioner shall serve copies of the complaint on the Respondent and any other named Party pursuant to [Section 1305](#).

(b) Arbitration of a dispute with the Contractor may be commenced by the Public Agency by filing with the Office of Administrative Hearings and serving on the Contractor the Public Agency's complaint in Arbitration. The time limit for filing such a complaint by the agency is as limited by the Contract or applicable law.

(c) The Petitioner shall submit with the complaint in Arbitration a non-refundable filing fee established by, and payable to, the Office of Administrative Hearings and the proof of service required in [Section 1305](#), or the complaint is deemed not to be filed.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 350 to new section 1350 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of article heading and renumbering of former section 1350 to new section 1381(b) and renumbering and amendment of former section 1363 to new section 1350 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment by General Services, Transportation and Water Resources departments of subsection (a) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

### 1351. Contents of Complaint in Arbitration

(a) A complaint by a Contractor shall be limited to the claim or claims presented to the Public Agency as required by the Contract.

(b) A complaint by a Contractor shall be verified in accordance with the provisions of [Section 446 of the Code of Civil Procedure](#) and shall contain:

(1) The caption, title and names of the Parties, as in civil actions, and the Contract number or other Contract designation.

(2) A copy of the final written decision and date of service of the decision from which the Arbitration is demanded.

(3) If no final written decision has been issued, a copy of the document that sets forth the date of acceptance of the Contract work.

(4) The name and address, for purposes of service, of the Petitioner.

(5) The name and address of any Interested Party, if joinder is requested, and any other Party.

(6) A statement to the effect that the claim or claims were previously presented to the Public Agency for decision in compliance with all Contract claims procedures.

(7) In ordinary and concise language, a statement of the claim or claims alleging the basis, with appropriate references to the Contract, for and the dollar amount of each claim.

(c) A complaint by a Public Agency shall contain:

(1) The caption, title and names of the Parties, as in civil actions, and the Contract number or other Contract designation.

(2) The name and address, for purposes of service, of the Petitioner.

(3) The name and address of any Interested Party, if joinder is requested, and any other Party.

(4) In ordinary and concise language, a statement of the claim or claims alleging the basis, with appropriate references to the Contract, for and the dollar amount of each claim.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.2 and 10240.5, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 351 to new section 1351 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Editorial correction of section number (Register 97, No. 27).
4. Renumbering of former section 1351 to new section 1383 and renumbering of former section 1364 to new section 1351, including amendment of section and Note filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
5. Amendment by General Services, Transportation and Water Resources departments of subsection hierarchy designations filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

## **1352. Joinder; Intervention**

(a) A Petitioner or Respondent may name an Interested Party in a complaint or cross-complaint as a Party whose joinder in the Arbitration is demanded:

(1) If done in the complaint first filed or when first answering a complaint or cross-complaint.

(2) At a later time, only if authorized by the Arbitrator upon motion timely and diligently made.

(b) At any time prior to a hearing on the merits, an Interested Party may be permitted to join in and be bound by the Arbitration proceedings if required by the terms of the Interested Party's contract or by the agreement of the Parties. Such joinder shall not be required if it unduly delays or complicates the expeditious conclusion of the Arbitration unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Parties.

(c) Where an Interested Party is made a Party to the Arbitration, the joinder shall be limited to the issues raised by the Respondent and Petitioner in the pleadings.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.9, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 352 to new section 1352 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1352 to new section 1373 and renumbering of former section 1340 to new section 1352, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1353. Amendment of Pleadings

Petitioner may amend the complaint prior to the filing of an answer to the complaint by filing the amendment with the Office of Administrative Hearings.

Amendments of the answer to the complaint or of the complaint subsequent to the filing of the answer to the complaint shall be made only for good cause shown. All amendments shall be deemed controverted. Objections to the amendments may be made orally and shall be noted in the record.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 353 to new section 1353 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1353 to new section 1384 and renumbering of former section 1365 to new section 1353 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1354. Answer

(a) Not later than thirty (30) days after service of the complaint Respondent shall file an answer to the complaint.

(b) When the state or any public agency or officer of the state is Petitioner, the answer shall be verified, unless an admission of the truth of the complaint might subject the Party to a criminal prosecution. If an objection to the complaint is filed under [Section 1356](#), time to answer is extended until 30 days after the Arbitrator has ruled on the objection. The time to answer may be extended by agreement of the relevant Parties, but an extension of time to answer does not extend the time to file an objection to the complaint under [Section 1356](#).

(c) The answer or objection will not be filed unless the Respondent submits a non-refundable, filing fee, established by and payable to the Office of Administrative Hearings, and proof of service required in [section 1305](#). The Office of Administrative Hearings may defer a Public Agency's timely submission of the filing fee due to delay in enactment of the state budget or similar circumstances out of the control of the Public Agency.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 354 to new section 1354 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1354 to new section 1389 and renumbering and amendment of former section 1366 to new section 1354 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. New subsection (c) filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).

## 1355. Contents of Answer to the Complaint

(a) The answer to the complaint shall be in writing and shall set forth in ordinary and concise language a direct statement of Respondent's defenses to each Claim asserted in the complaint together with any affirmative defenses or cross-complaint to be asserted.

(b) Any allegation of the complaint which is not denied in the answer shall be tried as uncontested and evidence is inadmissible to controvert any such allegation.

(c) Any objections listed in [Section 1356](#) may be set forth in the answer, whether or not asserted under [Section 1356](#).

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 355 to new section 1355 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Repealer of former section 1355 and renumbering and amendment of former section 1367 to new section 1355 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1356. Objection to Complaint: Grounds

(a) Not later than 30 days after service of the complaint a Respondent, in lieu of filing an answer, may file an objection to the complaint.

(b) The following objections may be raised:

- (1) The lack of jurisdiction.
- (2) Untimeliness in filing the complaint in Arbitration.
- (3) Failure to state a claim upon which any relief can be granted.
- (4) Ambiguity, uncertainty or unintelligibility of the complaint or parts thereof.
- (5) Failure to comply with the statutes or regulations governing these Arbitrations.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Renumbering and amendment of former section 1368 to new section 1356 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1357. Cross-Complaint

(a) Subject to the provisions of these rules and applicable law including joinder of Interested Parties, cross-complaints may be filed and served as follows:

- (1) At the time of answering a complaint or cross-complaint; or
- (2) At a later time, if authorized by the Arbitrator upon a showing of good cause.

(b) The provisions of [Sections 1350-1356](#) relating to complaints shall also apply to cross-complaints.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.9 and 10245.4, Public Contract Code.

### HISTORY:

1. Renumbering and amendment of former section 1369 to new section 1357 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## ARTICLE 7. DISCOVERY AND MOTIONS

### 1360. Discovery

Parties shall have the following obligations with respect to discovery in Arbitrations under this subchapter:

(a) Discovery (including inspection and production of documents and records, depositions, interrogatories, admissions, etc.) by agreement of the Parties is encouraged. For this purpose it is the duty of the Parties or their counsel to communicate with each other before initiating discovery to determine whether a reasonable agreement for discovery can be made. This subsection does not limit or modify the rights and obligations of the Parties with respect to discovery set forth in [Section 1283.05 of the Code of Civil Procedure](#), except subdivision (e) thereof, as specified in [Section 10240.11 of the Public Contract Code](#).

(b) Inspection and production of discoverable documents and records is the preferred initial means of discovery.

(c) Notwithstanding the provisions of [Sections 2030 and 2033 of the Code of Civil Procedure](#), all original documents relating to interrogatories and requests for admissions and all notices of the taking of deposition and inspection and production of documents shall be filed with the Office of Administrative Hearings and copies shall be served on all Parties to the Arbitration.

(d) On request of any Party made not less than 30 days prior to the hearing on the merits, each Party shall notify the other Parties in writing of the identity and current address of each expert witness to be presented as a witness at the hearing and a brief narrative statement of the qualifications of such witnesses and the general substance of the testimony which the witness is expected to give. At the same time, the Parties shall also exchange all written reports prepared by such witnesses and each Party shall have a reasonable opportunity to depose such witnesses. The Arbitrator may permit a Party to call an expert witness not included on the list upon a showing of good cause.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10240.11, Public Contract Code.

#### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Repealer filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
3. Renumbering of former section 360 to new section 1360 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
4. Amendment of article heading and renumbering and amendment of former section 1341 to new section 1360 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1361. Motions

All motions by the Parties shall be in writing, unless made on the record during hearing, and shall clearly state the action requested and the grounds relied upon. The original written motion, together with evidence of service of true copies thereof on all other Parties and the Arbitrator, shall be filed in the Office of Administrative Hearings. The Arbitrator shall conduct such proceedings and make such orders as deemed necessary to dispose of the issues raised by the motion.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
  2. Repealer filed 5-7-92; operative 6-8-92 (Register 92, No. 19).
  3. Renumbering of former section 361 to new section 1361 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
  4. Renumbering and amendment of former section 1344 to new section 1361 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
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## **ARTICLE 8. DEFAULT**

### **1370. Failure to Respond to Complaint or Cross-Complaint in Arbitration**

Failure of any Party to file an answer or objection to a complaint or cross-complaint pursuant to this subchapter is cause for holding such Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 370 to new section 1370 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1371. Disobedience of Lawful Order**

The failure or refusal of any Party to comply, after due notice, with any lawful order of the Arbitrator is cause for holding the, Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 371 to new section 1371 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment of section by General Services, Transportation and Water Resources departments filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).

### **1372. Default at Time of Hearing**

The failure or refusal of a Party of record to (1) timely appear at a hearing on the merits after due notice thereof, or (2) comply with any lawful order of the Arbitrator, at the hearing, is cause for holding such Party to be in default.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

**HISTORY:**

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 372 to new section 1372 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1372 to new section 1374 and renumbering and amendment of former section 1373 to new section 1372 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1373. Default Proceedings

When the matter is tried as uncontested, the Party not in default has the burden of proof of affirmative allegations, and affirmative findings shall be based only on the express admissions of the defaulted Party, judicially noticeable facts, or on evidence which would support findings of fact in an uncontested civil trial, or any combination thereof.

In proceedings conducted under this section, a Party in default has no right to cross-examine witnesses, or present any evidence to controvert the allegations of the complaint or the answer, or otherwise present any evidence.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 373 to new section 1373 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1373 to new section 1372 and renumbering of former section 1352 to new section 1373, including amendment of section heading and section, filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1374. Entry of Default

The entry in the record of the default of any Party for cause shall be by order of the Arbitrator either upon written motion and proceedings pursuant to [Section 1373](#), or upon stipulation of the Parties.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Amendment filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 374 to new section 1374 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1374 to new section 1375 and renumbering and amendment of former section 1372 to new section 1374 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1375. Effect of a Default

Upon a finding by the Arbitrator on the record that a Party is in default, the Arbitration shall proceed in accordance with [Section 1373](#) with respect to that Party.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Renumbering and amendment of former Article 9 (Sections 380-382) to Article 10 (Sections 390-393) and new Article 9 (Sections 375-381) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 375 to new section 1375 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Renumbering of former section 1375 to new section 1340 and renumbering and amendment of former section 1374 to new section 1375 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## ARTICLE 9. HEARINGS

### 1380. Prehearing Conference; Preparation for Hearing

(a) Unless the Petitioner, Respondent and Arbitrator otherwise agree, the Arbitrator shall order a prehearing conference. At the conference, the Arbitrator may consider, as appropriate, any of the following:

- (1) The simplification or clarification of the issues;
- (2) The possibility of obtaining stipulations, admissions, agreements on documents, understanding on matters already of record, use of affidavits, or similar agreements which will avoid unnecessary proof;
- (3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (4) The possibility of agreement disposing of all or any of the issues in dispute;
- (5) The desirability or necessity for prehearing briefs;
- (6) A timetable for completion of discovery;
- (7) Date for commencement of the hearing on the merits and an estimate of time for the hearing;
- (8) Such other matters as may aid in the disposition of the Arbitration. The results of the conference shall be reduced to writing by the Arbitrator in the presence of the Parties, and this writing shall thereafter constitute part of the record.

(b) The Parties may be ordered to exchange, at the prehearing conference, or at some other time in advance of the hearing, all exhibits each Party intends to offer at the hearing (other than exhibits exclusively used for impeachment or rebuttal); and may be ordered to index, offer and file some or all of the exhibits in advance of the hearing. The Party offering an exhibit at the hearing shall provide sufficient copies so that each Party, the Arbitrator and the witness have a copy.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### HISTORY:

1. Renumbering of former section 380 to new section 1380 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25)
2. Amendment of article 9 heading (including change of placement), renumbering of former section 1380 to new section 1345, and renumbering and amending former section 1342 to new section 1380 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1381. Setting, Notice and Place of Hearings**

(a) The Arbitrator, in coordination with the Parties and the Office of Administrative Hearings, shall set the date and time for all hearings conducted under these rules and shall serve written notice thereof on all Parties no later than 15 days prior to the date of hearing, provided, however, that no less than 30 days' notice shall be given for the hearing on the merits of the Arbitration.

(b) In the absence of agreement of the Petitioner and Respondent, the Arbitrator may, for the convenience of Petitioner, Respondent and the Arbitrator, order any hearing at any location.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 1670, Civil Code; Executive Order No. B50-78; and Sections 10240.5 and 10245.4, Public Contract Code.

#### **HISTORY:**

1. Renumbering of former section 381 to new section 1381 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Renumbering of former section 1381 to new section 1346, renumbering and amendment of former section 1313 to new section 1381(a), and renumbering and amendment of former section 1350 to new section 1381(b) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1382. Arguments, Briefs and Proposed Findings**

(a) The Arbitrator may require the Parties before, during or following a hearing to submit arguments or briefs on some or all of the issues.

(b) As a part of or in lieu of argument or briefs, the Arbitrator, prior to taking the issues under submission for decision, may require the Parties to submit proposed findings of fact and conclusions of law on some or all of the issues. When a proposed finding of fact is thus required to be submitted on an issue, the failure of a Party to propose such finding may be treated by the Arbitrator as a waiver of that Party's contentions with respect thereto.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Renumbering and amendment of former section 1334 to new section 1382 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1383. Attendance at Hearings**

(a) The Arbitration hearings shall be open to the public unless the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

(b) Subject to subdivisions (c) and (d), the Arbitrator, at the request of any Party, may exclude any witness not at the time under examination so that such witness cannot hear the testimony of other witnesses.

(c) A Party to the Arbitration cannot be excluded under this section.

(d) If a person other than a natural person is a Party to the Arbitration, an officer or employee designated by its attorney or representative is entitled to be present to assist in the presentation of that Party's case.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Renumbering and amendment of former section 1351 to new section 1383 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1384. Bifurcation of Hearing**

The Arbitrator may order separate determination of issues, including liability and damages, in any proceeding which is the subject of this subchapter.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Renumbering of former section 1353 to new section 1384 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1385. Continuances; Adjournment**

(a) Continuances or extensions of time may be permitted for good cause or on stipulation of all relevant Parties. A showing of good cause for any continuance or the basis of the stipulation shall be set forth in the record.

(b) The Arbitrator may take adjournments on the request of a Party or on the Arbitrator's own initiative, provided that, to the fullest extent practicable and consistent with the rights of the Parties the Arbitration hearing shall not be adjourned after the commencement of an evidentiary hearing on the merits.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### **HISTORY:**

1. Renumbering and amendment of former section 1343 to new section 1385 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1386. Submission on Agreed Facts or Summary Judgment

(a) By stipulation of the relevant Parties, any matter or issue pending before the Arbitrator may be submitted on an agreed statement of facts. The Arbitrator may permit arguments thereon, written or oral, and render an award based on the agreed statements submitted and such arguments.

(b) At any time prior to commencement of the hearing on the merits any Party may file a motion for summary judgment as provided for in the [Code of Civil Procedure Section 437c](#). Where the declarations and affidavits filed therein by the Parties indicate that no triable issue as to any material fact exists, the Arbitrator shall enter the award based upon the facts, the law and the Contract.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

### HISTORY:

1. Renumbering and amendment of former section 1347 to new section 1386 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## 1387. Evidence

(a) Oral evidence shall be taken only on oath or affirmation.

(b) Each Party shall have these rights: to present evidence relevant to the issues; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut the evidence against the Party. Any Party, or person identified with such Party, may be called and examined as if under cross-examination by any adverse Party.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence, including hearsay, shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions, provided, however, hearsay evidence even though not objected to shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. However, such evidence shall be subject to the exclusions of [Evidence Code Sections 1151](#), [1152](#), and [1154](#). The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

(d) The following additional exception to the "best evidence" rule ([Evidence Code Section 1500](#)<sup>1</sup>) applies: A duplicate is admissible to the same extent as an original unless:

(1) A genuine question is raised as to the authenticity of the original, or

(2) In the circumstances it would be unfair to admit the duplicate in lieu of the original.

"Duplicate" as used here means a counterpart or facsimile copy of the original produced by the same impression or from the same matrix as the original or by some technique of accurate reproduction.

<sup>1</sup> Section 1500 was superseded; the hyperlink is to Evidence code sections 1520, 1521, 1522 and 1523.

(e) Failure to comply with [Section 1380\(b\)](#) as to furnishing sufficient copies of exhibits, if it causes waste of time or delay, may be grounds for exclusion of the exhibits.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Renumbering and amendment of former section 1345 to new section 1387 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1388. Notice of Judicially Noticeable Facts**

In reaching a decision, the Arbitrator may take notice of, and find as true without proof, any fact which may be judicially noticed by the courts of this State, provided that the judicially noticed fact is set forth in the record.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

HISTORY:

1. Renumbering of former section 1346 to new section 1388 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### **1389. Record of the Proceedings**

The proceedings at the hearing shall be reported by a phonographic reporter or, with agreement of the Parties and consent of the Office of Administrative Hearings, otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5 and 10245.4, Public Contract Code.

HISTORY:

1. Renumbering and amendment of former section 1354 to new section 1389 filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

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## ARTICLE 10. DECISIONS AND AWARD

### 1390. Decision on the Merits

(a) A written Decision on the Merits shall be filed with the Office of Administrative Hearings and shall contain a summary of the evidence, reasons underlying the decision and, unless the Parties otherwise agree, findings of fact and conclusions of law. A copy of the decision shall be served by the Office of Administrative Hearings on each of the Parties.

(b) Objections to findings and conclusions may be filed by any Party within 15 days of receipt of the written decision. Any response to objections shall be filed within 15 days of receipt of the objections to findings and conclusions. The Arbitrator shall consider the objections and may notice a hearing thereon.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Sections 10240.5, 10240.8 and 10245.4, Public Contract Code.

#### HISTORY:

1. Renumbering and amendment of former Article 9 (Sections 380-382) to new Article 10 (Sections 39-393) filed 4-6-84; effective thirtieth day thereafter (Register 84, No. 14).
2. Renumbering of former section 390 to new section 1390 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
3. Amendment of subsections (a) and (b) and repealer of subsection (c) filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
4. Amendment of subsection (a) by General Services, Transportation and Water Resources departments filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).
5. Amendment of subsection (b) filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).

### 1391. Decision on Settlement

If the Parties settle any claim, in whole or part, during the course of the Arbitration proceedings, the terms of the agreed settlement shall be incorporated in a decision, if requested by the Parties, and a final award shall be issued by the Arbitrator.

Note: Authority cited: Sections 10240.5 and 10245.2, Public Contract Code. Reference: Section 10240.5, Public Contract Code.

#### HISTORY:

1. Renumbering of former section 391 to new section 1391 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

### 1392. Decision on Costs and Attorney's Fees

(a) The cost of conducting the Arbitration shall be borne equally by the Parties and in no case awarded to the prevailing Party. These costs shall include:

- (1) The Arbitrator's fee.
- (2) The costs of recording and transcribing the proceedings.
- (3) Any fees necessary to secure and maintain a hearing room.
- (4) Any fees for expert or technical advisors requested pursuant to [Section 1333](#).

(b) Other costs, including the filing fees, witness fees, costs of discovery, or any other cost necessarily incurred by one Party, other than attorney's fees, may be awarded to the prevailing Party in the Arbitrator's discretion on the same basis as is allowed in civil actions. These costs shall be taxed as in civil actions.

(c) Reasonable attorney's fees may be awarded in accordance with [Public Contract Code Section 10240.13](#) or other applicable law, if any.

(d) A petition for interest, costs and attorney's fees must be filed by any Party within 15 days of receipt of the decision on any objections filed pursuant to [Section 1390\(b\)](#) or, if there is no objection, within 30 days of receipt of the Decision on the Merits. Any response to a petition for interest, costs and attorneys fees shall be filed within 15 days of receipt of the petition. Any petition for interest, costs or attorney's fees shall be promptly determined and assessed by the Arbitrator in a separate hearing, as necessary, following the Decision on the Merits of the claim, and a Decision on Costs issued.

Note: Authority cited: Section 10240.5, Public Contract Code. Reference: Sections 10240.5 and 10240.13, Public Contract Code.

HISTORY:

1. Renumbering of former section 392 to new section 1392 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25).
2. Amendment filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).
3. Amendment by General Services, Transportation and Water Resources departments of subsection (d) filed 8-23-2000; operative 9-22-2000 (Register 2000, No. 34).
4. Amendment of subsection (d) filed 8-12-2004; operative 8-12-2004 pursuant of Government Code section 11343.4 (Register 2004, No. 33).
5. Editorial correction of History 4 (Register 2004, No. 43).

### **1393. Final Award**

Any Decision on Costs, together with the Decision on the Merits, shall be reflected in a Final Award issued by the Arbitrator.

Note: Authority cited: Section 10240.5, Public Contract Code. Reference: Sections 10240.5 and 10240.13, Public Contract Code.

HISTORY:

1. Renumbering of former section 393 to new section 1393 filed 6-20-97; operative 7-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 25)
2. Amendment of section heading and section filed 8-15-97; operative 8-15-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 33).

## **ARTICLE 11. CERTIFICATION OF ARBITRATORS BY THE PUBLIC WORKS CONTRACT ARBITRATION COMMITTEE**

### **1395. Standards and Qualifications**

(a) Arbitrators shall have substantial experience in or directly related to public works construction projects, particularly large-scale complex projects with or on behalf of federal, state or local government agencies. Extensive experience in the resolution of disputes arising out of such projects is desirable. Knowledge of California construction law is necessary.

(b) The experience in subdivision (a) may be met by a combination of factors, which shall include any one or more of the following:

(1) Five or more years' experience at the managerial or supervisory level in public works construction contracting with extensive experience in the resolution of disputes arising out of public contract claims.

(2) Five or more years' experience as an attorney representing parties in negotiating, litigating, or arbitrating public works construction contract claims.

(3) Five or more years' experience as a judge or arbitrator. This shall include extensive experience in adjudicating or otherwise resolving public works construction contract claims or other large-scale and/or complex commercial litigation.

(c) Applicant qualifications are evaluated on an individual basis by the Public Works Contract Arbitration Committee. The Committee has discretion to waive the qualifications of (a) and/or (b) on an individual's demonstration of equivalent qualifications.

Note: Authority cited: Section 10245.3, Public Contract Code. Reference: Section 10245.3, Public Contract Code.

#### **HISTORY:**

1. New article 11 (sections 1395-1398) and section filed 3-29-2004; operative 6-1-2004 (Register 2004, No. 14).

### **1398. Recertification of Arbitrators**

Arbitrators certified to the panel shall be required to apply for recertification every seven years to remain on the panel. Arbitrators shall be evaluated for recertification on the basis of the current standards and qualifications.

Note: Authority cited: Section 10245.3, Public Contract Code. Reference: Section 10245.3, Public Contract Code.

#### **HISTORY:**

1. New section filed 3-29-2004; operative 6-1-2004 (Register 2004, No. 14).

## APPENDIX A

### Revised PUBLIC WORKS CONTRACT ARBITRATION FEE SCHEDULE *Effective June 1, 2002*

Claim Amount	Non-Refundable Filing Fee
\$1 - 9,999 ➔	\$125
\$10,000 - 49,999 ➔	\$250
\$50,000 - 99,999 ➔	\$375
\$100,000 - 499,999 ➔	\$750
\$500,000 - 999,999 ➔	\$1,000
\$1,000,000 - 1,999,999 ➔	\$1,250
\$2,000,000 - 4,999,999 ➔	\$2,000
\$5,000,000 - 19,999,999 ➔	\$3,000
\$20,000,000+ ➔	\$4,500

THE FEE IS BASED ON THE AMOUNT OF THE CLAIM AS SHOWN ABOVE.

#### **NON-REFUNDABLE FILING FEES ARE REQUIRED WHEN FILING A COMPLAINT IN ARBITRATION**

If the non-refundable filing fee is not enclosed,  
the complaint will be deemed **NOT** filed.

Respondent is responsible for submitting a matching non-refundable filing fee **with or prior to** the filing of their Answer or Objection to a Complaint with OAH.

Also note that when a complaint is amended to increase the amount claimed, if necessary, **an additional amount** for the filing fee will be collected. *There will be no refund of fees if the amount claimed is reduced, because filing fees are nonrefundable.*

Additionally, **a filing fee and matching fee** will be required on all cross complaints in accordance with the above fee schedule.

## APPENDIX B

### Selected applicable portions of the Judicial Council's Ethics Standards for Neutral Arbitrators in Contractual Arbitration effective July 1, 2002

Please note that the ethics standards referenced in regulation section 1322 (as amended effective August 12, 2004) are not the standards currently published by the Judicial Council. Section 1322 references the standards effective July 1, 2002, in pertinent part, below.

#### DIVISION VI. Ethics Standards for Neutral Arbitrators in Contractual Arbitration

( \*\*\* indicates omitted text not applicable)

##### **Standard 1. Purpose, intent, and construction**

(a) These standards are adopted under the authority of [Code of Civil Procedure section 1281.85](#) and establish the minimum standards of conduct for neutral arbitrators. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.

(b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.

(c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b) and in conformance with all applicable law.

##### **Standard 2. Definitions**

As used in these standards:

(a) [Arbitrator and neutral arbitrator]

(1) "Arbitrator" and "neutral arbitrator" mean any arbitrator who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them;

(C) By a dispute resolution provider organization, under an agreement of the parties;  
or

(D) By any party acting alone, if all parties agree in writing that the unilaterally appointed arbitrator is to serve impartially.

(2) Where the context includes events or acts occurring before an appointment is final, "arbitrator" and "neutral arbitrator" include a person who has been served with notice of a proposed nomination or appointment.

(b) "Applicable law" means constitutional provisions, statutes, decisional law, California Rules of Court, and other statewide rules or regulations that apply to arbitrators who are subject to these standards.

(c) "Conclusion of the arbitration" means the following:

(1) When the arbitrator is disqualified or withdraws before making an award, the date on

which the arbitrator's appointment is terminated;

(2) When the arbitrator makes an award and no party makes a timely application to the arbitrator to correct the award, the final date for making an application to the arbitrator for correction; or

(3) When a party makes a timely application to the arbitrator to correct the award, the date on which the arbitrator serves a corrected award or a denial on each party, or the date on which denial occurs by operation of law.

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(h) "Financial interest" means a financial interest within the meaning of [Code of Civil Procedure section 170.5](#).

(i) "Gift" means a gift as defined in Code of Civil Procedure section [170.9\(1\)](#).

(j) "Honoraria" means honoraria as defined in Code of Civil Procedure section [170.9\(h\)](#) and (i).

(k) "Lawyer in the arbitration" includes any lawyer present at the arbitration hearing or who is identified in any arbitration brief or other papers submitted to the arbitrator as representing a party for purposes of the arbitration.

(l) "Lawyer for a party" includes any lawyer representing a party and any lawyer currently associated in the practice of law with a lawyer hired to represent a party.

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#### **Standard 4. Duration of duty**

(a) Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.

(b) If, after the conclusion of the arbitration, a case is referred back to the arbitrator for reconsideration or rehearing, the arbitrator must comply with these ethics standards from the date the case is referred back to the arbitrator until the arbitration is again concluded.

#### **Standard 5. General duty**

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

#### **Standard 6. Duty to refuse appointment**

Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she is not able to be impartial.

#### **Standard 7. Disclosure**

(a) [Intent] This standard is intended to identify the matters that must be disclosed by a person nominated or appointed as an arbitrator. To the extent that this standard addresses matters that are also addressed by statute, it is intended to include those statutory disclosure requirements, not to eliminate, reduce, or otherwise limit them.

(b) [Required disclosures] A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or herself of any matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial and must disclose all such matters to the parties. Matters that must be disclosed include:

(1) (Family relationships with party) The arbitrator or a member of the arbitrator's extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party.

(2) (Family relationships with lawyer in the arbitration) The arbitrator, a member of the arbitrator's extended family, or the arbitrator's former spouse is:

(A) A lawyer in the arbitration. For purposes of this paragraph only, "lawyer in the arbitration" includes a person who has served as a lawyer for or as an officer of a public agency and who personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration;

(B) The spouse or domestic partner of a lawyer in the arbitration; or

(C) Currently associated in the private practice of law with a lawyer in the arbitration.

(3) (Significant personal relationship with lawyer or party) The arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or a lawyer for a party.

(4) (Service as arbitrator) The arbitrator is serving or, within the preceding five years, has served:

(A) As a neutral arbitrator in another arbitration involving a party to the current arbitration or a lawyer for a party; if the arbitrator is serving or has served in this capacity, he or she must disclose the information required by [Code of Civil Procedure section 1281.9\(a\)\(4\)](#).

(B) As a party-appointed arbitrator in another arbitration for either a party to the current arbitration or a lawyer for a party, or if the arbitrator is serving or has served in this capacity, he or she must disclose the information required by [Code of Civil Procedure section 1281.9\(a\)\(3\)](#).

(C) As a neutral arbitrator in another arbitration in which he or she was selected by a person serving as a party-appointed arbitrator in the current arbitration. If the arbitrator is serving or has served in this capacity, he or she must disclose the information required by [Code of Civil Procedure section 1281.9\(a\)\(4\)](#).

In addition, if the combined total of the cases disclosed under (A), (B), and (C) is greater than five, the arbitrator must provide a summary that states the total number of cases in which the arbitrator served in each capacity and the number of cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

(5) (Service as other dispute resolution neutral) The arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or prior case involving a party or lawyer in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration.

(A) [Time frame] For purposes of subdivision (b)(5), "prior case" means any case in which the arbitrator concluded his or her service as a dispute resolution neutral within two years prior to the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the arbitrator concluded his or her service before January 1, 2002.

(B) [Information about cases involving payment] If the arbitrator was or will be paid for serving in such a capacity, he or she must disclose:

(i) The number of pending and prior cases in which he or she was or will be paid for serving in each capacity for each party, lawyer in the arbitration, or other lawyer currently associated in the private practice of law with a lawyer in the arbitration; and

(ii) In each such case in which the arbitrator rendered a decision as a temporary

judge or referee, the date of the decision, the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any.

(C) [Summary of case information] If the total of the cases disclosed under this paragraph (5) is greater than five, the arbitrator must also provide a summary that states the number of cases in which the arbitrator rendered a decision as a temporary judge or referee in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.

(D) [Services commenced prior to July 1, 2002] An arbitrator will be deemed to have complied with this requirement with respect to any such services commenced prior to July 1, 2002, if the arbitrator declares in writing that he or she has requested the required information from any dispute resolution provider organization administering those prior services and has disclosed all required information pertaining to those services within his or her knowledge.

(6) (Attorney-client relationships) Any attorney-client relationship the arbitrator has or has had with a party or lawyer for a party. Attorney-client relationships include the following:

(A) A party or an officer, a director, or a trustee of a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law;

(B) A lawyer for a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law; and

(C) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration.

(7) (Other professional relationships) Any other professional relationship the arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party. Professional relationships include the following:

(A) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party;

(B) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a lawyer in the arbitration; and

(C) The arbitrator is, or, within the preceding two years, was associated in the private practice of law with a lawyer in the arbitration.

(8) (Financial interests in party) The arbitrator or a member of the arbitrator's immediate family has a financial interest in a party.

(9) (Financial interests in subject of arbitration) The arbitrator or a member of the arbitrator's immediate family has a financial interest in the subject matter of the arbitration.

(10) (Affected interest) The arbitrator or a member of the arbitrator's immediate family has an interest that could be substantially affected by the outcome of the arbitration.

(11) (Knowledge of disputed facts) The arbitrator or a member of the arbitrator's extended family has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.

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(13) (Membership in organizations practicing discrimination). The arbitrator's membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation. Membership in a religious organization, an official military organization of the United States, or a nonprofit youth organization need not

be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

(14) Any other matter that:

(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial;

(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration; or

(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice.

(c) [Inability to conduct or timely complete proceedings] In addition to the matters that must be disclosed under subdivision (b), an arbitrator must also disclose:

(1) If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and

(2) Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.

(d) [General provisions] For purposes of this standard:

(1) (Obligation regarding extended family relationships) An arbitrator will be deemed to have complied with the obligation to inform himself or herself of and to disclose relationships involving his or her extended family and former spouse if the arbitrator (i) declares in writing that he or she has sought information about these relationships from the members of his or her immediate family and any members of his or her extended family living in his or her household and (ii) has disclosed all the information pertaining to these relationships within his or her knowledge.

(2) (Collective bargaining cases excluded) The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.

(3) (Offers of employment or professional relationship) An arbitrator is not required to disclose an offer of employment or professional relationship from a party or lawyer in the arbitration or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration if the arbitrator has informed the parties about the offer and has sought their consent as required by subdivision (d) of standard 10.

(4) (Names of parties in cases) When information, including names of parties, is disclosed about a case, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(e) [Continuing duty] An arbitrator's duty to inform himself or herself of and to disclose the matters described in subdivisions (b) and (c) of this standard, except those matters described in subdivision (b)(12) of this standard, is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding. With regard to matters enumerated in subdivision (b)(12) of this standard, after making the initial disclosure required by subdivision (f) of this standard in an arbitration, an arbitrator does not have a continuing duty to inform himself or herself of or to disclose these matters in that arbitration.

(f) [Time of disclosure] Within the time specified in [Code of Civil Procedure section](#)

[1281.9\(b\)](#), a proposed neutral arbitrator must disclose all matters in subdivisions (b) and (c) of this standard of which the arbitrator is then aware. Except for matters described in subdivision (b)(12) of this standard, if an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (b) or (c) of this standard, the arbitrator must disclose that matter to the parties as soon as practicable, but in no event more than 10 calendar days after the arbitrator becomes aware of the matter.

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#### **Standard 9. Duty to refuse gift, bequest, or favor**

(a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration.

(b) From service of notice of appointment or appointment until two years after the conclusion of the arbitration, an arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests have come before the arbitrator in the arbitration.

(c) An arbitrator must discourage members of his or her family residing in his or her household from accepting a gift, bequest, favor, or honoraria that the arbitrator would be prohibited from accepting under subdivisions (a) or (b).

(d) This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.

#### **Standard 10. Duties and limitations regarding future professional relationships or employment**

(a) [Offers as lawyer, expert witness, or consultant] From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer in the pending arbitration or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration.

(b) [Offers for other employment or professional relationships] In addition to the disclosures required by standard 7, within the time specified in subdivision (b) of Code of Civil Procedure section 1281.9, a proposed arbitrator must disclose whether or not he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party, a lawyer in the arbitration, or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration while that arbitration is pending, including offers to serve as a dispute resolution neutral in another case. A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in [Code of Civil Procedure section 1281.91\(b\)](#).

(c) [Acceptance of offers prohibited unless intent disclosed] If an arbitrator fails to make the disclosure required by subdivision (b) of this standard or if, in the disclosure made pursuant to subdivision (b), the arbitrator states that he or she will not entertain offers of employment or new professional relationships from the time of appointment until the conclusion of the arbitration, the arbitrator must not entertain or accept any such offers, including offers to serve as a dispute resolution neutral.

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(e) [Relationships and use of confidential information related to the arbitrated case] An arbitrator must not at any time,

(1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, an expert witness, or a consultant relating to the case arbitrated; or

(2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

**Standard 11. Conduct of proceeding**

(a) An arbitrator must conduct the arbitration fairly, promptly, and diligently and in accordance with the applicable law relating to the conduct of arbitration proceedings.

(b) In making the decision, an arbitrator must not be swayed by partisan interests, public clamor, or fear of criticism.

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